



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 300  
DENVER, COLORADO 80202-2466

July 22, 2004

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

Ref: 8ENF-T/8MO

Kim Aiperspach  
City of Ronan  
Wastewater Treatment Facility  
Public Works Department  
205 Mink Lane  
Ronan, MT 59864

Re: Findings of Violation and Order for  
Compliance, Docket No. **CWA-08-2004-0055**

Dear Mr./Ms. Aiperspach:

Based on our review of all available information, the Environmental Protection Agency ("EPA"), Region 8 has determined that you have violated the Clean Water Act (the "CWA"), as amended. The CWA requires that an authorizing National Pollutant Discharge Elimination System ("NPDES") permit be obtained from EPA prior to the discharge of pollutants into waters of the United States. See 33 U.S.C. Section 1311.

Specifically, you failed to obtain the appropriate NPDES authorization under the CWA for discharge of pollutants into waters of the United States. This has occurred into a tributary to Crow Creek on multiple occasions when the City of Ronan Wastewater Treatment Facility (the "Facility") discharged fecal coliform in concentrations exceeding the concentrations permitted in the Facility's NPDES permit. The location of the violations is in the City of Ronan within the boundaries of the Flathead Indian Reservation, Lake County, Montana, at 47°31'15" latitude, 114°06'50" longitude.

Enclosed is a U.S. Environmental Protection Agency Administrative Order (the "Order"), which specifies the nature of the violations and describes actions necessary in order for you to come into compliance with the CWA. The Order requires, among other things, that you install operating disinfection equipment to meet fecal coliform. Please see the Order itself for the details of these and other requirements.

The enclosed Order requires you to inform EPA in writing within ten days whether you intend to comply with this Order.



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The authority for EPA's action is provided under Section 309(a)(3) of the CWA, 33 U.S.C. Section 1319(a)(3).

Please review the Order carefully. All questions which are technical in nature should be directed to Rosemary Rowe (406/457-5020) of my staff. Questions which are legal in nature should be directed to Donna Arthur, Senior Enforcement Attorney, at 303/312-6954.

The Clean Water Act requires the Administrator of EPA to take all appropriate enforcement action necessary to secure prompt compliance with the CWA and any Order issued thereunder. Section 309 of the CWA provides a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or debarment from Federal contracts and/or loans for any noncompliance with the CWA or an Order issued pursuant to the CWA.

Please be advised that the issuance of this Order does not preclude civil or criminal actions in the U.S. District Court pursuant to Sections 309(b) or (c) of the CWA, or assessment of civil penalties pursuant to Sections 309(d) or (g) of the CWA for the violations cited herein.

Sincerely,

**Eddie A. Sierra for/**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

cc: Tina Artemis (Regional Docket Clerk)



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

**In the Matter of:**

**City of Ronan  
Wastewater Treatment Facility  
Public Works Department  
205 Mink Lane  
Ronan, MT 59864,**

**Respondent.**

**Docket No. CWA-08-2004-0055**

**ADMINISTRATIVE ORDER**

**INTRODUCTION**

1. This administrative order (“Order”) is issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (“EPA”) by Clean Water Act § 309(A), 33 U.S.C. § 1319(a). This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, EPA Region 8.

2. EPA regulations authorized by the Clean Water Act are set out in 40 C.F.R. part 122, and violations of the Clean Water Act, permits issued under the Clean Water Act, or EPA regulations at 40 C.F.R. part 122 constitute violations of section 309 of the Clean Water Act, 33 U.S.C. § 1319.

3. EPA alleges that the Respondent has violated the Clean Water Act, permit, and/or regulations, and orders the Respondent to achieve compliance, as more fully explained below.



## FINDINGS OF VIOLATION

4. In order to restore and maintain the integrity of the nation's water, section 301 of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States, unless the discharge is in compliance with a permit issued pursuant to the CWA.

5. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (“NPDES”) program, administered by EPA and/or, under certain circumstances, the State, to permit discharges into navigable waters, subject to specific terms and conditions.

6. The City of Ronan Wastewater Treatment Plant (“Facility”) is operated by Respondent for the treatment of municipal sewage. The Facility discharges effluent to a tributary of Crow Creek, which is a water of the United States within the meaning of 40 C.F.R. § 122.2 and “navigable waters” as defined in CWA 502(7), 33 U.S.C. § 1362(7). The Facility consists of a three-celled lagoon and a 7.9-acre constructed wetlands.

7. The Facility is located in the City of Ronan within the external boundaries of the Flathead Indian Reservation, which is “Indian Country” as defined at 18 U.S.C. § 1151. EPA has jurisdiction over the NPDES program within Indian Country, and therefore over the Facility.

8. EPA issued NPDES permit No. MT-0021474 (the “Permit”), effective September 1, 2002, which authorizes the Respondent to discharge treated effluent to a tributary of Crow Creek pursuant to CWA § 402(1), 33 U.S.C. § 1342(a). Pursuant to Permit Section III, Paragraph A, the Respondent is subject to all terms and conditions of the Permit.

9. Section I.C.1. of the Permit provides that the quality of the effluent discharged by the Facility shall, at a minimum, meet the following: (1) a 30-day average limitation for



biological oxygen demand of 30 milligrams per liter (mg/L); (2) a 30-day average limitation for Total Suspended Solids (TSS) of no more than 45 mg/L; and (3) a 30-day average limitation for fecal coliform of no more than 200 organisms per 100 milliliters (org/100 ml). The fecal coliform limitation is measured at a discharge pipe where the effluent leaves the wetlands to enter the tributary to Crow Creek.

10. According to Discharge Monitoring Reports submitted to EPA by the Respondent, the Facility exceeded the fecal coliform limitation eight times between September 2002 and November 2003:

<b>Month</b>	<b>Fecal Coliform (200 org/100 ml limitation)</b>
September 2002	14,700 org/100 ml
October 2002	1,600 org/100 ml
June 2003	460 org/100 ml
July 2003	440 org/100 ml
August 2003	800 org/100 ml
September 2003	10,800 org/100 ml
October 2003	12,300 org/100 ml
November 2003	3,900 org/100 ml

11. For each of the exceedances of the fecal coliform limit listed in Paragraph 10, the Respondent has provided a letter stating that it believes that the exceedances were caused by waterfowl nesting on the wetlands.

12. The State of Montana also permits the Facility. Beginning in September 2003, in order to attempt to verify the claim in Paragraph 11, the State required Respondent to sample the



effluent after it left the third cell and before it entered the wetlands, in addition to sampling at the regular monitoring point for the effluent, at the end of the constructed wetlands. The results for the period from September 2003 through January 2004 were as follows:

<b>Date</b>	<b>Plant Influent</b>	<b>Cell 3 Effluent</b>	<b>Wetlands Effluent</b>
September 2003	62,000,000 org/ 100 ml	206 org/100 ml	10,800 org/100 ml
October 2003	3,800,000 org/100 ml	4,700 org/100 ml	12,300 org/100 ml
November 2003	2,000,000 org/100 ml	6,900 org/100 ml	3,900 org/100 ml
December 2003	1,500,000 org/100 ml	527 org/100 ml	190 org/100 ml
January 2004	3,400,000 org/100 ml	265 org/100 ml	50 org/100 ml

For each of the months of September 2003 through January 2004, the fecal coliform limit of 200 org/100 ml was exceeded as the effluent left the third cell and before it entered the wetlands, indicating that exceedances of the limit occur prior to any influence of waterfowl in the wetlands.

13. Fecal coliform is a “pollutant” as defined in CWA § 502(6), 33 U.S.C. § 1362(6).

14. “Discharge of a pollutant” means “any addition of any pollutant to navigable waters from any point source, per CWA § 502(12), 33 U.S.C. § 1362(12).

15. A “point source” as defined at CWA § 1362(14), 33 U.S.C. § 502(14), means “any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged,” such as a wetlands.

16. The City of Ronan is a “person” as defined at CWA § 502(6), 33 U.S.C. § 1362(6).



17. By discharging a pollutant from a point source into waters of the U.S., the Respondent has violated Permit Section I.C.1. of the Permit, as well as Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, during the months of September and October 2002; and June July , August, September, October, and November 2003.

### **ORDER**

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator, EPA, under CWA §§ 308 and 309(a), 33 U.S.C. §§ 1318 and 13119(a), redelegated to the Regional Administrator, and redelegated to the Assistant Regional Administrator for Enforcement, Compliance, and Environmental Justice, it is hereby ORDERED:

1. Within ten (10) calendar days of receipt of this Order, the Respondent shall submit to EPA written notice of intent to comply with the requirements of this Order.
2. Within sixty (60) calendar days of receipt of this Order, the Respondent shall submit to EPA a plan and schedule for installing and operating disinfection equipment that will allow the Respondent to meet the effluent fecal coliform limits of 200 org/100 ml at the discharge point, Outfall 001. Upon review and approval of the plan and the schedule by EPA, both will become enforceable parts of this Order. In no event shall the schedule to install disinfection equipment and meet the fecal coliform limit extend beyond three (3) years from the effective date of this Order.
3. All written notices, correspondence, and reports required by this Order shall be sent to the following address:



Rosemary Rowe  
U.S. Environmental Protection Agency  
Montana Office  
10 West 15th Street  
Suite 3200  
Helena, MT 59626

4. Any deliverables, plans, reports, specifications, schedules, and attachments required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved deliverables, plans, reports, specifications, and attachments shall be deemed a failure to comply with this Order and may subject the Respondent to further EPA enforcement action.

5. This Order does not constitute a waiver or modification of the terms and conditions of Respondent's NPDES Permit, which remains in full force and effect.

6. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$27,500 per day for each violation of Clean Water Act Section 301, 33 U.S.C. § 1311, and Section 1319(c) authorizes fines and imprisonment for willful or negligent violations of the Act. Section 309(g), 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the Act. Issuance of this Order shall not be deemed to be a waiver of or election by EPA to forego any civil or criminal action to seek penalties, fines, or other relief under the CWA.

7. This Order shall be effective upon receipt by the Respondent.

Compliance with the terms and conditions of the Order shall not be construed to relieve the Respondent of its obligations to comply with any applicable federal, state, or local law.

Failure by the Respondent to complete the tasks described herein in the manner and time frame





specified pursuant to this Order may subject the Respondents to a civil action under Section 309 of the Clean Water Act, 33 U.S.C. § 1319, for violation of this Order.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Date: 7/21/04

By: Eddie A. Sierra for/  
Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance, and  
Environmental Justice

